

# **Change in Bank Control**

**Other Changes and Activities**

## **Comptroller's Corporate Manual**

**Washington, DC  
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This booklet should be used together with other booklets of the *Comptroller's Corporate Manual*. Users of this booklet should refer to the "[General Policies and Procedures](#)" (GPP) booklet for discussion of general filing instructions and procedures. They may also find useful the following booklets: "[Background Investigations](#)," "[Charters](#)," and "[Changes in Directors and Senior Executive Officers](#)."

## Background

Twelve CFR 5.50 addresses change in bank control requirements and is authorized by the Change in Bank Control Act (CBCA), 12 USC 1817(j), and the OCC's general rulemaking authority, 12 USC 93a. The OCC is responsible for reviewing changes in control of national banks and must consider a number of factors in determining whether a notice should be disapproved. The OCC amended its corporate regulations at 12 CFR 5 on December 31, 1996, to update and reduce unnecessary regulatory costs and burdens in the corporate process. Changes made to 12 CFR 5.50 include or clarify that:

- Unless informed otherwise by the OCC, persons previously not disapproved by the OCC are exempt from refiling to acquire additional stock.
- An increase in the amount of time to file notices from 30 to 90 days if the person is exempt from prior notice requirements.
- Each party must file or rebut the presumption of control if two or more people, not acting in concert, propose at the same time to acquire equal percentages of 10 percent or more of a class of voting securities subject to the Securities Exchange Act, 15 USC 78I, or if immediately after the transaction, no other shareholder owns or has the power to vote a greater percentage of a class of voting securities.
- The regulation applies to uninsured national banks.

## Definitions

An **acquisition** includes the purchase, assignment, transfer, or pledge of voting securities, or an increase in the percentage ownership of a bank resulting from a redemption of voting securities.

**Acting in concert** means knowingly participating in a joint activity or parallel action toward a common goal of acquiring control whether or not pursuant to

an express agreement. It also can mean combining voting or other interests for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement whether or not written.

A **beneficiary** includes the members, parties, or participants of a voting trust.

**Control** is the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of any class of voting securities of a national bank.

**Good faith**, in the context of debt previously contracted, means that a person acquires control of a national bank by obtaining voting shares in satisfaction of a previously contracted debt, and that such debt was made or acquired without prior knowledge of any default.

A **national bank** means an insured or uninsured national banking association and any bank or trust company located in the District of Columbia operating under the OCC's supervision.

A **notifier** means any person submitting personal biographical and financial information.

A **party or person** means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust or voting agreements, or any other form of entity and includes any group of persons acting in concert.

A **technically complete notice** must contain personal and biographical information, detailed financial information, details of the proposed change in control, information on any structural or managerial changes contemplated for the national bank, and other relevant information required by the OCC.

A **trustee** is the person or persons designated by a voting trust to vote national bank stock subject to a voting trust agreement (also termed voting trustee or voting representative in the case of a voting agreement).

**Voting securities** mean shares of common or preferred stock, or similar interests, such as options, if the shares or interests, by statute, charter or, in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank. (See section 5.50 for instances when preferred stock or similar interests will not be considered voting securities (12 CFR 5.50(d)(6)).

A **voting trust or agreement** includes any legally binding action by shareholders attempting to aggregate and control the voting of a national bank's stock subject to it.

## Applicability

### General

Parties who wish to acquire control of a national bank through the purchase, assignment, transfer, pledge, or other disposition of voting stock must notify the OCC and should submit the information requested by the Interagency Notice of Change of Control form that can be found in this booklet.

Section 5.50 requires any party acquiring 25 percent or more of a class of voting securities of a national bank to give notice to the OCC 60 days prior to the acquisition. In addition, persons acquiring 10 percent or more of a class of voting securities are presumed to have acquired control in certain circumstances. This includes situations where two or more persons simultaneously acquire equal percentages of 10 percent or more of a national bank's voting securities.

### Escrow Arrangements

Section 5.50 may apply to an escrow arrangement if absolute voting control over the requisite percentage of a bank's stock is transferred to the escrow agent.

When determining if compliance with section 5.50 is required for proposals involving an escrow agent, the OCC considers whether an assignment to exercise absolute voting control exists if no apparent *de facto* acquisition of control occurs. In making this determination, the OCC considers whether:

- The escrow agents or other assignees have sufficient time to vote a controlling interest in a national bank.
- An escrow or similar arrangement serves a business purpose.
- Any shareholder votes might be taken, and the assignors might instruct the escrow agents or other assignees on how to vote the shares.

### Limited Purpose Banks

Persons intending to acquire control of a trust bank or credit card bank established under the Competitive Equality Banking Act of 1987, are subject to section 5.50's notice requirements regardless of whether the bank has federal deposit insurance. This includes corporations, partnerships, and similar organizations (see Holding Company discussion in this booklet).

## Voting Trusts

A voting trust or voting agreement allows a group of persons to act in concert with the power to control or influence the management or policies of a national bank. The OCC generally considers certain voting trusts and agreements (voting trusts) as control persons under the CBCA.

### **Absolute and Non-absolute Voting Trusts**

An absolute voting trust gives the trustee(s) absolute power and authority on all issues presented for shareholder voting (i.e., the trustee(s) votes all bank stock subject to the voting trust at his or her discretion). Absolute voting trusts:

- Do not provide for any voting influence by the beneficiaries, except for the power to direct the sale of securities held in the trust in an amount sufficient to constitute a change in control.
- Do not allow the beneficiaries to remove the voting trustee(s), except for cause, or to dissolve the voting trust.
- May allow the trustee(s) to be changed, because of events not within the control of the beneficiaries (e.g., death of trustee(s), voluntary resignation, or disability).

A non-absolute voting trust allows the beneficiaries to direct or influence the way the trustee(s) votes on any issue presented for shareholder voting and to remove the trustees at will or for reasons other than for cause. The effect of a non-absolute voting trust is to allow a group to act in concert with the power to control or influence the management or policies of a national bank.

### **Initial Filing**

The OCC's analysis includes an evaluation of each notifier, as appropriate, and the notifiers as a group. Only one notice must be submitted for an absolute or non-absolute voting trust. All beneficiaries and trustees must be identified, and a copy of the voting trust agreement must be provided with the notice. The notifiers must comply with applicable publication requirements found at 12 CFR 5.50(g).

In an absolute voting trust notice, all trustees must file the notice and submit complete personal biographical and financial information. Beneficiaries should submit such information as well, if the trustees do not demonstrate the financial capacity to support the proposed acquisition.

In a non-absolute voting trust notice, all trustees and any beneficiary owning 10 percent or more of the voting trust shares must file the notice and submit

complete personal biographical and financial information. The OCC may require complete biographical and financial information on any beneficiary who has been associated previously with banks subject to supervisory concern or for other reasons relevant to control considerations.

### **Subsequent Filing(s)**

If the trustee(s) of an absolute voting trust changes, a new notice must be submitted. If the trustee(s) of a nonabsolute voting trust is changed or a new beneficiary(ies) owning 10 percent or more of the voting shares is added, a new notice must be submitted. Generally, notifiers must follow the guidance for initial filings. Complete biographical and financial information normally will be required only for the new trustees and, in the case of a non-absolute voting trust, beneficiaries owning 10 percent or more of the voting trust shares. If the bank is subject to supervisory concern or for other reasons relevant to control considerations, biographical and financial information on any or all beneficiaries or trustees may be required.

## **Exemptions**

### **Filing Exemptions**

The following transactions are exempt from the notice requirements of section 5.50.

- Acquisition of additional shares by a person who:
  - Has, continuously since March 9, 1979, held power to vote 25 percent or more of the voting securities of the bank, or
  - Is presumed to have controlled the bank continuously since March 9, 1979, if the transaction does not result in the person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the bank, or in other cases, when the OCC determines that the person has controlled the bank continuously since March 9, 1979, or
  - Has previously filed a notice for the subject bank and has not been disapproved.
- Transactions subject to approval under:
  - Section 3 of the Bank Holding Company Act, 12 USC 1842.
  - Section 18 of the Federal Deposit Insurance Act, 12 USC 1828.

- Section 10 of the Home Owners Loan Act, 12 USC 1467a.
- Certain transactions described in the Bank Holding Company Act under:
  - 12 USC 1841(a)(5).
  - 12 USC 1842 (a)(A) and (B).
- Transactions involving customary one-time proxy solicitation or receipt of *pro rata* stock dividends.
- Transactions involving the acquisition of shares of a foreign bank that has a federally licensed branch in the United States.

### **Prior Notice Exemptions**

The following transactions are exempt from the prior notice requirements, but do require the filing of a notice within 90 days after the transaction occurs.

- Acquisition of voting shares through testate or intestate succession.
- Acquisition of voting shares as a *bona fide* gift.
- Acquisition of voting shares from a redemption of voting securities.
- Acquisition of control as the result of actions by third parties that are not within the control of the acquiror.
- Acquisition of voting shares in satisfaction of a debt previously contracted in good faith. A person or persons acting in concert, who purchases a previously defaulted loan secured by bank stock, cannot rely on the prior notice exemption to foreclose on the loan, seize, or purchase the underlying collateral, and acquire control of the bank.

### **Rebuttal of Control**

In certain circumstances involving an acquisition of less than 25 percent of a national bank's voting securities, a filing under the prior notice requirement or a rebuttal to the presumption of control must be filed. To rebut the presumption of control, filers must provide sufficient information to support any contention that control will not be exercised over the national bank. Because the circumstances surrounding each presumption of control are unique, no sample letter was created.

The following situations create the presumption of control and a rebuttal to the presumption must be filed unless a change of control notice is filed.

- Any party acquires 10 percent or more, but less than 25 percent, of a national bank's voting securities, if:
  - The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934 (15 USC 78l), or
  - Immediately after the transaction no other party owns a greater proportion of that class of voting securities.
- Two (or more) parties, not acting in concert, each proposes to acquire simultaneously equal percentages of 10 percent or more of a national bank's voting securities and the acquisitions trigger the presumption of control.

A control person does not need to file an amended or new notice to acquire additional shares of the same class of voting securities of a national bank if all of the following requirements are met:

- The person previously filed a change in control notice with the OCC.
- The OCC did not object to the person's proposed change in control notice.
- The person continuously maintained a control position with the national bank.

Any person seeking to rebut the presumption of control should contact the appropriate district office for further information.

## **Key Policies**

### **General**

The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank that could have serious adverse effects on a bank's financial stability or management resources, the interests of the bank's customers, the Federal Deposit Insurance Fund, or competition.

## Decision Criteria

In summary, the OCC may disapprove a change in control if it finds that:

- The proposed acquisition of control would result in a monopoly or would further any monopoly or to attempt to monopolize the business of banking anywhere in the United States.
- The effect of the proposed acquisition may substantially lessen competition or tend to create a monopoly or in any other manner restrain trade and the anticompetitive effects are not clearly outweighed by benefits to the convenience and needs of the community to be served.
- The financial condition of any acquiring party is such as might jeopardize the stability of the bank or prejudice the interests of the depositors.
- The competence, experience, or integrity of any of the acquiring party(ies) or of the proposed management indicate that it would not be in the interests of the depositors and the public for such persons to control the bank.
- The acquiror does not provide the OCC with all required information.
- The proposal would result in an adverse effect on the deposit insurance funds.

## Summary of Process

### General

Parties wishing to acquire control of a national bank must submit an original and five copies of a notice, providing specific information for review (see Documents) [Interagency Notice of Change in Bank Control](#) and [Interagency Biographical and Financial Report](#)). Applicants filing by diskette only have to submit a hard copy of page(s) in the application or attachments where a signature is required. The appropriate filing fee, in accordance with the current annual "Notice of the Comptroller of the Currency Fees" must accompany the notice. The acquiring party must publish an announcement of the proposed change in bank control within 10 days of filing the change-in-bank control notice. Details of the publication requirements are provided the "Publication and Comment Period" section. The OCC reviews the change-in-bank control notice to determine whether it is technically complete. After it is technically complete, the OCC makes a decision on the change-in-bank control notice within the time frames established in the statute (see the Review discussion).

## Notice Contents

A technically complete filing should demonstrate that:

- The acquiror(s) provided all information requested in the notice, including biographical and financial information.
- The acquiror(s) has the financial ability to consummate the transaction and service any debt, if the purchase is not transacted with cash.
- Lapses in employment history are satisfactorily explained.
- Information submitted to shareholders in a tender offer, if applicable, is adequate and accurate.
- The appraiser acknowledged the independence of any appraisals used to support asset values, if applicable.

## Publication and Comment Period

The acquiring party must publish an announcement of the proposed change in bank control within 10 days of filing the notice with the OCC. The publication triggers a 20-day public comment period. The announcement must provide the information required by 12 CFR 5.50(g) and state that interested parties have 20 days from the date of the announcement to file comments at the appropriate district office (see the "[Public Involvement](#)" booklet).

The acquiring party must publish in a newspaper generally circulated in the community in which the affected national bank is located an announcement containing:

- The name of the affected national bank.<sup>1</sup>
- The identity of each party proposing to acquire the national bank.
- A statement that comments may be furnished to the appropriate district office within 20 days of publication and the identity of the office by name and address.

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<sup>1</sup>If a bank is operating under more than one name or under a name not substantially similar to its legal name, the public notices of any application published in accordance with 12 CFR 5 should contain both the legal name of the bank and the name(s) the bank uses in the community in which the publication circulates.

- A statement that the OCC will keep the information in the notice confidential until it has acted, except for certain information that may be released and made available for public inspection and copying under the Freedom of Information Act (FOIA).

Within 10 days of the public notice, the filer must provide the appropriate district office with a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other required information.

Under certain circumstances, the OCC may:

- Waive or shorten the publication requirement.
- Delay the public announcement.
- Waive or shorten the public comment period in limited cases.
- Act on a notice prior to the expiration of the public comment period if an emergency exists.

Any interested person may participate in the OCC licensing process by commenting in writing on any corporate filing during the applicable public comment period. For a discussion of how the public may participate, see the "[Public Involvement](#)" booklet.

## Background Investigations

The OCC conducts an investigation of the competence, experience, integrity, and financial ability of each party named in a change in bank control notice, unless waived (see the "[Background Investigations](#)" booklet).

If adverse information is received on a person applying for a controlling interest in a national bank, he or she is notified and allowed to complete, correct, or challenge the information prior to the OCC making a decision.

## Review

The OCC has 60 calendar days to review the proposed transaction after the notice is deemed technically complete. The OCC has the discretion to extend the 60-day review period for 30 more days. If the OCC fails to act, the acquiror may consummate the transaction.

The review period may be extended an additional two times, for not more than 45 days each, if the OCC determines that:

- An acquiring party did not furnish all of the information required.
- Any material information submitted is substantially inaccurate.
- It is unable to complete the investigation of an acquiring party, because of delay by, or inadequate cooperation of, the acquiring party.
- It requires additional time to decide that no acquiring party has a record of failing to comply with the requirements of the Bank Secrecy Act (31 USC 5311).

The OCC may issue a no objection letter prior to receiving information on all of its background investigations. However, if adverse or previously withheld information is received, the OCC will consider available remedies under the CBCA or other statutes.

## Requests for Additional Information

When requesting additional information, the OCC will send a letter to the acquirors that includes a response due date. The OCC may disapprove a notice if the acquirors fail to provide the requested information.

If an acquiring party cannot submit the additional information on or before its deadline, it should contact the OCC as soon as possible. Generally, if the information is not received within 120 days, the OCC will consider the notice withdrawn. The OCC will require a new notice and filing fee if the acquiring party wishes to pursue the change in control after 120 days.

If the need for additional information for a technically complete notice is discovered early within the original 60-day time period, sufficient time may remain to allow the acquiring party to respond to the request and the OCC to analyze that information without extending the original 60-day time period.

The OCC may require the acquiring party to file an Amended Notice of Change in Bank Control and restart the entire notification process if the additional information is substantial enough to warrant a new change in bank control notice. In such instances, republication and an additional filing fee may be required.

## Examples of Situations That May Result in Disapproval

- The acquiring party mismanaged any financial institution(s) when he/she had control, was a director or senior officer, or served in another decision-making capacity.

- Significant and improper benefit occurred from insider transactions at any financial institution with which the acquiror was previously associated in a management or control position.
- The acquiror was convicted of a felony.
- The acquiror was subject to discipline, censure, or denial of the right to do business or practice a profession by a state or federal regulatory agency or a license granting body.
- The acquiror intentionally or deliberately submitted insufficient, inaccurate, or misleading biographical and/or financial information.
- The capital level of the affected bank is below an acceptable level, unless capital will be restored promptly to an appropriate level.

## Appeals

The OCC's notice of disapproval sets out its appeals procedures. A brief outline of that process follows.

A disapproved filer may seek review of the OCC's decision by filing a written request for a hearing within 10 days of receipt of the notice of disapproval. Failure to request a hearing in a timely fashion will result in the notice of disapproval constituting a final and unappealable order.

Upon receipt of a timely request for a hearing, the Comptroller's designee will issue a hearing order establishing the legal authority for the OCC's jurisdiction over the proceeding and addressing the request for hearing. The disapproved filer must answer the hearing order within 20 days after service of the order. Generally, failure to file an answer constitutes a waiver of the filer's right to appear and contest the allegations in the hearing order. Any final order issued by the Comptroller based upon a filer's failure to answer is deemed a consent order and, as a result, cannot be appealed. Upon issuance of the hearing order, an administrative law judge will be assigned to preside over the matter. If the OCC's disapproval stands after the administrative hearing and the entry of a final decision of the Comptroller, the filer may seek judicial review of the Comptroller's decision.

## Consummation

All proposed changes in control must be consummated within six months from the decision date. The OCC generally does not extend this time period. However, if extenuating circumstances exist, the OCC may consider doing so.

## Specific Requirements

### Holding Companies

Corporations, partnerships, certain trusts, associations, and similar organizations must submit notices to the OCC if they are not bank holding companies or are not required to obtain Federal Reserve Board approval under the Bank Holding Company Act when acquiring control of a national bank. Other transactions, included in section 5.50(e)(2)(ii), are described in the Bank Holding Company Act and are not subject to the notice requirements of section 5.50.

### Director Qualifications

All persons who become bank directors after a change of control must comply with the requirements in 12 USC 72. All directors of a national bank must be citizens of the United States; however, if a bank is a subsidiary or an affiliate of a foreign bank, the OCC may waive U.S. citizenship requirements for a minority of the bank's directors.

A majority of a national bank's directors must reside in the state in which the bank is located (i.e., the state(s) in which it has its main office or branches) or within 100 miles of its main office for at least one year immediately preceding their election (see "[Director Waivers](#)" booklet).

### Hart-Scott-Rodino Filing

Persons required to file a notice under the CBCA should consider the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR), 12 USC 18a, to their proposed acquisition. The HSR established premerger notification and waiting requirements for persons planning to consummate large mergers and acquisitions.

The Federal Trade Commission (FTC), by regulation, can exempt acquisitions subject to the CBCA from the HSR requirements. That exemption is available only if copies of all information and documentary materials filed with the OCC are filed simultaneously with the FTC and the Department of Justice at least 30 days prior to consummation of the proposed acquisition.

Only those transactions that meet certain threshold tests are subject to the HSR. Generally, those threshold tests relate to the size of the parties to the transaction and the size of the transaction. The acquiring party and the target bank must determine the applicability of the HSR to the proposed transaction and, if required, file a copy of the CBCA notice with the FTC and the

Department of Justice (DOJ). The HSR authorizes the assessment of civil money penalties for failure to comply with its provisions.

An exemption from the HSR notice and waiting period is permitted if the change in control prevents a probable bank failure. In such situations, the proposed acquirors must notify the FTC and the DOJ of their intent to rely on this exemption and request that the OCC act under the exemption.

## Push-Down Accounting

Push-down accounting is required for financial reporting, if an arms-length purchase accounting transaction results in a change in bank control of at least 95 percent of the bank voting stock. Under push-down accounting, when a bank is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired bank are restated to their fair values as of the acquisition date. Those values, including any goodwill, are reflected in the financial statements of the parent and the acquired bank. (See the OCC's Consolidated Reports of Condition and Income (call report) Instructions and Bank Accounting Advisory Series, dated June 1994.)

## Reporting of Stock Loans

Any foreign bank, or any affiliate of a foreign bank, must file a consolidated report if they have credit outstanding to any person or group of persons that, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a national bank. Other reporting requirements may be applicable (12 CFR 5.50(h)).

## Tardy Notices

The OCC may prevent an unlawful acquisition or require divestiture if a bank is acquired in violation of the CBCA or OCC requirements. The agency may subpoena records and take testimony to determine if a party provided false information in a notice or otherwise violated those requirements. Acquirors filing tardy notices may be assessed civil money penalties. The OCC also may publicize any remedial action taken against a potential acquiror.

For notices filed subsequent to the change in control, the OCC must advise filers when the notice is deemed technically complete and performs the same review, investigation, and verification procedures as for a notice filed prior to an acquisition. In addition, the OCC will evaluate the appropriateness of divestiture and assessment of civil money penalties.

## Tender Offers

The OCC must review and clear any tender offer to purchase national bank stock that will result in a change of control of a national bank with a class of securities registered under the Securities Exchange Act of 1934. A copy of any tender offer must be provided with the notice. Stock purchase information in a tender offer that is also submitted must be summarized and incorporated by reference in the notice. Tender offer materials should be filed with the Securities and Corporate Practices Division of the OCC in Washington, D.C.

The OCC may treat confidentially notices filed in contemplation of a public tender offer that are subject to the requirements of the Securities and Exchange Act of 1934. The OCC may delay (but not waive) publication requirements for those notices up to 34 days after the technically complete notice is filed. The public notice may be delayed at times out of concern that an acquiring party or bidder complying with the Exchange Act may be disadvantaged by the delays imposed under the notice review period. The OCC may delay publication requirements if:

- The acquiring party requests such treatment and states that a public announcement of the tender offer and the filing of appropriate forms with the OCC will occur within 34 days from the filing of the notice.
- The OCC determines that it is in the public interest to grant such treatment.

In each of those instances, the acquiring party must send proof of the publication of the announcement to the appropriate licensing manager within 10 days of the date of its publication.

## OCC Advisory Opinions to Other Federal Regulatory Agencies

In addition to processing its own change-in-bank control notices, the OCC provides information to the other federal regulatory agencies on proposed bank acquirors of financial institutions consistent with statutes, regulations, and a policy statement on the interagency exchange of supervisory information (see "[Comments to Other Agencies](#)" booklet).



OMB No. for FDIC 3064-0019  
OMB No. for FRB 7100-0134  
OMB No. for OCC 1557-0014  
OMB No. For OTS 1550-0032  
Expiration Date: 01/31/2000

Public reporting burden for the collection of information for this notice is estimated to average 30 hours, including the time to gather and maintain data in the required form, to review instructions and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429; Secretary, Board of Governors of the Federal Reserve System, 20th St. and Constitution Ave., NW, Washington, D.C. 20551; Licensing Policy and Systems Division, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219; or Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

An organization or a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

## Interagency Notice of Change in Control

### General Information and Instructions

#### Preparation and Use

This form is used to file notice to acquire, under certain circumstances, shares of depository institutions or depository institution holding companies, pursuant to the Change in Bank Control Act, as amended (12 USC 1817(j)). The information must be submitted to the appropriate regulatory agency of the institution whose shares are to be acquired. All inquiries on preparation of the notice should be directed to that agency which, in some circumstances, may modify the information requested. The regulatory agency will review the submitted notice to determine if it is complete. If so, an acknowledgment letter will be sent indicating the date complete, which begins the 60-day statutory review period. If the submitted notice is not complete, the regulatory agency may either request additional information or it may return the notice. If the required information is not available, please explain. The questions are not intended to duplicate information supplied on another form or in an exhibit; a cross reference to the information is acceptable.

For additional information regarding the processing procedures and guidelines, and any supplemental information that may be required, please refer to the appropriate regulatory agency's procedural guidelines (i.e., *Comptroller's Corporate Manual*, the FRB's *Processing Applications Through the Federal Reserve System* and the *Applications Procedures Manual*, the FDIC's Rules and Regulations (12 CFR Section 303) and relevant policy statements, or the OTS' *Application Processing Handbook*), or contact the agency directly for specific instruction.

## Biographical and Financial Report

To assist the regulatory agencies in evaluating the factors specified in the Change in Bank Control Act, an [\*Interagency Biographical and Financial Report\*](#) must be submitted for **each** person named in the notice.

## Supporting Information

The formal questions in the notice are not intended to limit the acquiror's presentation, and the regulatory agency may request additional necessary information. If any information furnished in the notice changes materially during the processing of the notice or prior to consummation, such changes should be communicated promptly to the regulatory agency with which the notice was filed.

## Compliance

The proposed acquiror is expected to comply with all representations and commitments made in this notice.

Transactions subject to the Harts-Scott-Rodino Antitrust Improvement Act of 1976 (15 USC 18a), which applies to certain very large transactions, require a pre-merger filing with the Federal Trade Commission and the Department of Justice.

## Notice of Publication

An acquiror must publish an announcement of the proposed acquisition in a newspaper of general circulation in the community in which the head office of the financial institution or holding company is located. In the case of a bank holding company, an announcement must also be published in each community in which the head office of a bank subsidiary of the holding company is located. A copy of the affidavit(s) of publication should be submitted to the appropriate regulatory agency. Contact the appropriate regulatory agency for the specific requirements of the notice of publication.

## Confidentiality

In general, requests for confidential treatment of specific portions of the notice must be submitted in writing concurrently with the submission of the notice and must discuss the justification for the requested treatment. An acquiror's reasons for requesting confidentiality should specifically demonstrate the harm (e.g., to its competitive position, invasion of privacy) that would result from public release of information (5 USC 552). Information for which confidential treatment is requested should be (1) specifically identified in the public portion of the notice (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." An acquiror should follow the same procedure regarding a request for confidential treatment with regard to the subsequent filing of supplemental information to the notice.

An acquiror should contact the appropriate regulatory agency for specific instructions regarding requests for confidential treatment. The appropriate regulatory agency will determine whether the information submitted as confidential will be so regarded and will advise the acquiror of any decision to make available to the public information labeled as "Confidential."

# Interagency Notice of Change in Control

## I. Personal Information

(a) Name of proposed acquiror(s)

(Last)

(First)

(Middle--no initials)

(b) Name and address of insured depository institution or depository institution holding company whose shares are to be acquired:

(Name)

(Street Address)

(City)

(State)

(ZIP Code)

(c) Name, title/employer, address, telephone number and fax number of person to whom inquiries concerning this notice may be directed:

(Name)

(Title/Employer)

(Street Address)

(City)

(State)

(ZIP Code)

(Telephone Number)

(Fax Number)

2. Does this notice represent prior notification to the regulatory agency?

Yes ☐ No ☐

If the response is no, state the nature of the exception upon which the acquiror is relying for an exception to the prior notice requirement. If no exception is available, please discuss the reason(s) that prior notice was not given and modify the wording of the form as appropriate to provide all necessary information related to the transaction.

3. (a) At the institution to be acquired, total number of voting shares authorized: \_\_\_\_

(b) Total number of voting shares outstanding: \_\_\_\_ Existing \_\_\_\_ Pro Forma

4. Provide the following information. For any shares registered or to be registered in another name (such as a trust, corporation, or partnership), indicate the names of registered parties, beneficial owners and trustees, as applicable.

Full name and address of each acquiror/transferee	Number of shares now owned, controlled, or held	Number of shares to be purchased by or transferred to the acquiror/transferee	Number of shares after completion of proposal
TOTAL			
Total as percent of shares outstanding	%	%	%

5. Indicate:

- (a) The purchase price(s) per share of shares to be acquired \$ \_\_\_\_\_
- (b) Total purchase price for the entire proposed transaction \$ \_\_\_\_\_
- (c) The current book value per share \$ \_\_\_\_\_
- (d) The current market value per share \$ \_\_\_\_\_  
(including date and source of information, if available)

6. Discuss the proposal, including the purpose, terms, and conditions of the [proposed] acquisition, and the manner in which the acquisition will be made. Summarize and attach copies of all pertinent documents, such as purchase and sale agreements, shareholder agreements, non-complete agreements, employment contracts, and trust agreements.

7. Provide the following information.

Name of each acquiror/transferee	Total purchase price	Source and amount of funds
	\$	
TOTAL	\$	

- (a) If cash funds will be used, provide copies of checking, savings, or money market account statements. If assets will be liquidated, list those assets and provide a copy of the documents that can verify the timing of such transaction and the amount of the anticipated proceeds.
- (b) If any portion of the funds (or other consideration) for the acquisition will be borrowed, indicate the name of each borrower, name and address of each lender, amount financed, collateral to be pledged, and terms of the transaction, including interest rates, amortization requirements, guarantors, endorsers, co-makers, and any other arrangements, agreements, and understandings between and among the parties. If applicable, submit a copy of any loan commitment letter.
- (c) Indicate the means through which the borrowed funds will be repaid. Provide details if the acquiror will rely on salaries, dividends, fees, or other funds from the insured depository institution or depository institution holding company to be acquired.

8. Provide the following information.

Name of each seller/transferor	Number of shares now held	Number of shares to be sold/transferred	Number of shares after completion of proposal
Total			
Total as percent of total shares outstanding	%	%	%

9. Identify any person or parties employed, retained, or to be compensated by any acquiror, or by any person on behalf of any acquiror, to make solicitations or recommendations to stockholders and thereby assist in the acquisition. Include a description of the terms of such employment, retainer, or arrangement for compensation, and provide a copy of any such agreement or contract.
10. List and provide copies of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock in connection with the proposed acquisition.
11. Describe in detail any plans or proposals that any acquiror may have to liquidate the insured depository institution or depository institution holding company to be acquired, to sell its assets, to merge it with any company, or to make any other significant change in its business strategy or corporate structure.
12. If changes are contemplated with respect to the board of directors or senior executive officers of the insured depository institution or depository institution holding company to be acquired, provide a current and pro forma list of officers and directors. The regulatory agency with which this notice has been filed should be contacted to determine the filing an/or other information

requirements associated with changes to the board of directors or senior executive officers, pursuant to Section 32 of the Federal Deposit Insurance Act (12 USC 1831i).

13. For each acquiror, indicate any positions currently held (director, officer, or employee) in any other insured depository institution or depository institution holding company. Also indicate if any acquiror directly or indirectly (such as through personal trusts, corporations, or similar arrangements) owns, controls, or has power to vote 10 percent or more of the voting stock of any other insured depository institution or depository institution holding company.

Name of each acquiror/transferee	Name and address of each insured depository institution or depository institution holding company	Position/ Date appointed	Percent ownership of institution

14. If any office of any insured depository institution or depository institution holding company with which the acquiror is currently associated is located in the same geographic market as the subject institution, provide the name and location of each office of such other organization.

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### Privacy Act Notice

A copy of this document is provided to the appropriate regulatory agency as required under 12 USC 1817(j) and implementing regulations. This notice, including supporting material, is available to the public upon request under the provisions of the Freedom of Information Act (5 USC 552). Contact the appropriate regulatory agency for the specific procedures under which the notice would be disclosed to the public. To the extent that it contains personal and financial information concerning individual acquirors of insured depository institutions and depository institution holding companies, the information may be subject to the Privacy Act of 1974 (5 USC 552a) which provides safeguards for personal information.

This form solicits information that will enable the regulatory agencies to evaluate and make a decision on each proposed change in control under the standards prescribed by the Change in Bank Control Act. Failure to provide information requested in connection with the processing of this notice could result in disapproval of a proposed acquisition or a determination that complete notice has not been submitted. Any person acquiring control of an insured depository institution or holding company without filing a notice prior to the proposed acquisition may be subject to substantial civil money penalties. The Change in Bank Control Act requires the regulatory agencies processing this notice to furnish copies of this information to other federal and state banking authorities. Where possible violations of laws or regulations are disclosed, relevant information may be made available to other regulatory agencies or other law enforcement or governmental agencies. Identification of parties to a proposed transaction and details of that transaction, to the extent material to the regulatory agency's determination, may be incorporated in orders and notices issued under the Change in Bank Control Act or otherwise made public.

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**Certification<sup>1</sup>**

I certify that the information contained in this notice has been examined carefully by me and is true, correct, and complete, and is current as of the date of this submission. I acknowledge that any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject me to legal sanctions provided by 18 USC 1001 and 1007.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Title (if applicable)

\_\_\_\_\_  
Title (if applicable)

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<sup>1</sup>This notice should be signed by each acquiring party, or by at least two directors, officers, partners, or others authorized to sign on behalf of an acquiring party that is not an individual.

## Publication Notice

A notice of Change in Bank Control has been filed with the Comptroller of the Currency, Washington, D.C. 20219 by

**(List each acquiring party.)**

To acquire a controlling interest in

**(Legal name of bank and name(s) bank uses in community in which publication will circulate.)**

**(City or Town)**

**(State)**

The notice was filed pursuant to 12 USC 1817(j) of the Federal Deposit Insurance Act and/or Part 5 of the regulations of the Comptroller of the Currency that require parties who wish to acquire control of a national bank to notify the Comptroller of the Currency in writing 60 days prior to the proposed acquisition. Unless extended by the Comptroller of the of the Currency, the 60-day review period expires on (date). Be advised that: (i) a letter of nondisapproval can be issued in advance of the close of the statutory period; (ii) the Comptroller of the Currency may extend the period of review consistent with the provisions of 12 USC 1817(j) and/or 12 CFR 5.50; and (iii) the remaining portion of the notice will be kept confidential until the Comptroller of the Currency has acted, but at that time certain additional summary information will be released and made available, upon the request of any person, consistent with the Freedom of Information Act, 5 USC 552 ("FOIA") and 12 CFR 5.50.

Any persons desiring to comment on this proposed acquisition should submit their written comments within 20 days of the date of this publication to: Licensing Manager at the appropriate district office (insert name and address of district office where notice was filed). The public file is available for inspection in the district office during regular business hours.



## Prefiling

### Licensing Staff

1. Refers acquiring party that requests instructions to the "[General Policies and Procedures](#)" booklet, the "[Background Investigations](#)" booklet, and this booklet of the *Comptroller's Corporate Manual*. Applicants may also find the "[Background Investigations](#)," "[Charters](#)," and "[Changes in Directors and Senior Executive Officers](#)" booklets useful.
2. Requests an optional prefiling meeting with the acquiring party to review procedures for change in bank control and factors that may influence the OCC's review of the notice.
3. If any prefiling discussion or meetings reveal significant policy, legal, or supervisory issues, contacts Bank Organization and Structure (BOS) to decide :
  - Whether the notice should be filed with the Washington office, if broad issues are involved.
  - Whether specific issues should be carved out for Washington action, while the notice continues to be processed in the appropriate district office.
  - When the filing should be forwarded to Washington.
4. Prepares memoranda on all prefiling meetings and records pertinent information from telephone calls. Retains memoranda and other information in a pending file.

## Rebuttal of Control

### Acquiring Party

5. Submits a rebuttal of control letter to the appropriate licensing manager, if applicable.

### Licensing and Legal Staff

6. Notify appropriate Assistant Deputy Comptroller/Examiner-in-Charge (ADC/EIC) and/or portfolio manager of receipt of rebuttal control letter.

7. Review rebuttal of control letter to determine if it successfully refutes the presumption of control.
  - If yes, notify acquiring party that presumption of control has been successfully rebutted.
  - If no, notify acquiring party to file notice, with appropriate filing fee and to publish notice.
8. Advise appropriate ADC/EIC and/or portfolio manager of determination and, if warranted, of any concerns.

## **Filing the Notice and Publication**

### **Acquiring Party**

9. Submits notice (original and five copies), filing fee, and request for delay (in the case of a proposed tender offer) or waiver of publication, if applicable, to the appropriate licensing manager.
10. Publishes notice within 10 days of filing with the district office.

### **Licensing Staff**

11. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
12. Establishes the official file to maintain all original documents.
13. Notifies appropriate ADC/EIC and/or portfolio manager of receipt of application.
14. Forwards the filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. Retains copy of the deposit memorandum. Contacts applicant if the filing fee is not received or is inaccurate.
15. Within five business days of receipt:
  - Acknowledges receipt of filing, advises filer of the decision target date, and provides CAIS Control Number.
  - Solicits comments from the appropriate ADC/EIC and/or portfolio manager and other OCC divisions, as appropriate, with preliminary responses required by the 15th day after the filing date.

- If a legal issue has been identified in addition to civil money penalties (CMPs), or a legal opinion has been submitted with the filing, forwards relevant materials to the Law Department and requests a response on whether a significant legal issue is present by the 15th day after the receipt date.
  - If filer has already acquired control, makes recommendation and forwards request to district counsel to determine if CMPs should be pursued (refer to PPM 5000-7 (Rev.) April 8, 1991).
16. Reviews notice to determine if it is technically complete.
  17. If the filer has already acquired control of a national bank, advises him/her that shares in excess of 10 percent may not be voted until the acquiring party is notified of the OCC's decision.
  18. Makes determination on request for delay or waiver of publication requirement, if applicable.
    - If yes, consults with BOS and prepares approval waiver letter for signature by the appropriate delegated official.
    - If no, documents reasons that the filing does not qualify and sends a copy of the waiver request to BOS.
  19. If at any time the filing presents significant policy, legal, or supervisory issues, contacts BOS to decide :
    - Whether the notice should be filed with the Washington office, if broad issues are involved.
    - Whether specific issues should be carved out for Washington action, while the notice continues to be processed in the appropriate district office.
    - When the filing should be forwarded to Washington.

## Acquiring Party

20. Prepares and submits additional information if requested.

## Licensing Staff

21. Reviews additional information and determines whether the notice is technically complete.

22. Advises acquiror that the notice is technically complete and specifies the earliest possible decision date.
23. Requests filing fee if not yet received.
24. Makes appropriate CAIS entries.
25. Sends copies of technically complete notice to other regulatory agencies, as appropriate, and requests comments.

## **Investigation**

26. Conducts background investigations to assess competence, experience, and integrity of each acquiring party named in the notice. Also, analyzes financial ability (see the "[Background Investigations](#)" booklet).
27. Forwards completed fingerprint cards to BOS for processing.
28. Completes the background investigation checklist to document responses received from the background checks and to comply with the statutory requirement that the investigation's findings be maintained as a record of the agency.
29. If applicable, notifies acquiring party of receipt of adverse information received from the background checks.

## **Acquiring Party**

30. If applicable, submits information to the licensing manager to complete, correct, or challenge adverse information.

## **Public Comments**

### **Licensing Staff**

31. If copies of the application are requested, follows the guidance in the "[Public Involvement](#)" booklet.
32. If public comments are filed, follows the procedures in the "[Public Involvement](#)" booklet.
33. Reviews additional information and extends, if necessary, the review period and notifies the acquiror of the new target date for consummation.
34. Makes appropriate CAIS entries.

35. Reviews the file, prepares the confidential memo (including the background investigation checklist), makes recommendation, and forwards the official file to the appropriate official for decision.

## Decision

36. Decides application under delegated authority or forwards the official file to BOS for decision at least 14 days prior to the end of the 60-day review period or any extension thereof. If forwarded to BOS, goes to step 38.
37. If decision is not to object to the notice:
  - Issues a letter of no objection and forwards a Satisfaction Survey to the acquiring party.
  - Forwards a copy of the no-objection letter to the bank.
  - Notifies interested parties of decision.
  - Notifies appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any concerns.
38. Makes appropriate CAIS entries.

## Bank Organization and Structure (BOS)

39. Makes appropriate CAIS entries.
40. Reviews the file and all relevant information and solicits comments from other OCC divisions, as appropriate.
41. Makes recommendation and forwards the official file to the appropriate official for decision.
42. If disapproval is recommended, forwards the draft transmittal letter to Enforcement and Compliance (E&C) for review prior to routing for decision.
43. If filer has already acquired control of a national bank, coordinates with Litigation and E&C for appropriate action, if disapproval is recommended.
44. Notifies licensing manager and filer of the decision.

45. Notifies appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any concerns.
46. Sends the filer the decision letter and a Satisfaction Survey within three days of decision and notifies all interested parties of the decision.
47. Notifies Washington personnel and other affected federal agencies, whenever appropriate, on a case-by-case basis (see PPM 6100-3 (Rev.), January 22, 1986).
48. Makes appropriate CAIS entries.
49. Returns official file to the district if additional processing is required.
50. Sends copy of the confidential memorandum, the decision, and notification letter for each disapproval to the Quality Assurance Coordinator.

## **Consummation and Close Out**

### **Acquiring Party**

51. Sends written notice of the consummation to the licensing manager within 10 days of consummation.

### **Licensing Staff**

52. If notification of consummation is not received within 180 days after the decision letter, contacts the acquiring party to determine whether the acquisition has been consummated. If contact is made by telephone, documents the content of the conversation for the official file.
53. Makes appropriate CAIS entries.
54. Forwards the official file to Central Records.

# Change in Bank Control

## References

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<b>Administrative Hearings</b>	
Regulations	12 CFR 19.160-19.161, 19.162
<b>Background Investigations</b>	
Regulations	28 CFR 16.34, 50.12
<b>Bank Holding Company Act</b>	
Laws	12 USC 1842-1850
<b>Bank Secrecy Act (BSA)</b>	
Law	31 USC 5311
Regulation	31 CFR 103
<b>Capital Requirements</b>	
Law	12 USC 51
<b>Capital Stock</b>	
Law	12 USC 52
<b>Capital Structure Change</b>	
Regulation	12 CFR 5.46
<b>Change in Bank Control</b>	
Laws	12 USC 93a, 1817(j)
Regulation	12 CFR 5.50
Issuance	Policies and Procedures Manual (PPM) 6100-3 (Rev.)
<b>Civil Money Penalties</b>	
Laws	12 USC 504, 18 USC 1001
Issuance	PPM-5000-7 (Rev.)
<b>Depository Institution Management Interlocks Act</b>	
Law	12 USC 3201
Regulation	12 CFR 26
<b>Directors</b>	
Law	12 USC 71
<i>Citizenship Waiver</i>	
Law	12 USC 72
<i>Convicted of a Crime</i>	
Law	12 USC 1829

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<i>Engaged in Underwriting</i>	
Law	12 USC 78
<i>Number</i>	
Law	12 USC 71a
<i>Oath</i>	
Law	12 USC 73
<i>President</i>	
Law	12 USC 76
<i>Purchases and Sales</i>	
Law	12 USC 375
<i>Residency</i>	
Law	12 USC 72
<i>Qualifications</i>	
Law	12 USC 72
Regulation	12 CFR 7.2005
<b>Exempt Transactions</b>	
Laws	12 USC 1467a, 1828(c), 1842
<b>Filing Fees</b>	
Regulation	12 CFR 5.5
<b>Fraudulent Schemes</b>	
Regulations	16 CFR 801-2
<b>Hart-Scott-Rodino Antitrust Improvements Act of 1976</b>	
Law	15 USC 18a
Regulation	16 CFR 800
<b>Interagency Exchange and Coordination of Corrective Action</b>	
Issuance	PPM 6100-3 (REV)
<b>Proxy</b>	
Regulation	12 CFR 11
<b>Shareholders' List</b>	
Law	12 USC 62
<b>Voting Trust</b>	
Regulation	12 CFR 7.2022